

REMARKS

A revocation and new power of attorney is enclosed.

Claims 1-67 are pending.

Claims 1-5 have been amended to delete unnecessary language.

New claims 6-67 have been added and recite additional aspects of applicant's invention.

Enclosed is a check for excess claim fees and a check for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050.

Claims 1-5

In the Office action, claims 1-5 were rejected as anticipated under 35 U.S.C. 102(e) by U.S. Patent Publication No. 2002/0052860 (Geshwind). Applicant respectfully disagrees.

As noted in section 706.02(f)(1) of the Manual of Patent Examining Procedures (MPEP), a publication of a 35 U.S.C. 111(a) application, which claims priority under 35 U.S.C. 119(e) to a prior U.S. provisional application, may be accorded the earlier filing date as its prior art date under 35 U.S.C. 102(e) *if the earlier-filed provisional application has proper support for the subject matter as required by 35 U.S.C. 119(e)*.

The Geshwind published application is based on an application filed on October 31, 2001. Although that filing date is earlier than the filing date of the pending application (February 8, 2002), the applicant is entitled to the earlier filing date of U.S. provisional application 60/267,840, which was filed on February 9, 2001.

Although the Geshwind patent publication apparently claims priority to U.S. provisional application 60/244,714, filed on October 31, 2000, applicant does not have (and has been unable to obtain) a copy of that provisional application to determine to what extent (if any) the disclosure of the Geshwind patent publication may be accorded the earlier prior art date.

Applicant submits that the Geshwind patent publication may be accorded a prior art date of October 31, 2000 only to the extent there is sufficient support (if any) in the provisional

application. Applicant requests that the Examiner withdraw the rejection or, in the alternative, provide applicant with a copy of provisional application 60/267,840 and point out the specific portions of that application that are being relied upon to support the rejections.

#### Claims 6-25

New claims 6-25 have been added and recite additional novel and non-obvious aspects of applicant's invention. The claimed subject matter may facilitate the review of test results by teachers, students, administrators and others. The claimed methods provide improvements in educational techniques. No new matter has been added.

Applicant notes that a finding of anticipation requires that *each and every* limitation in the claim be found expressly or inherently in a single prior art reference.

Similarly, a finding of obvious under 35 U.S.C. 103 requires that, where more than one reference is relied upon, there must a suggestion of motivation to combine the references so as to obtain the claimed subject matter. Furthermore, the motivation to combine the references must be "clear and particular." *See, e.g., C.R. Bard, Inc. v. M3 Sys., Inc.*, 157 F.3d 1340, 1352, 48 USPQ2s 1225, 1232 (Fed. Cir. 1998); *Teleflex, Inc. v. Ficosa North Am. Corp.*, 63 USPQ2d 1374, 1387 (Fed. Cir. 2002). Hindsight which relies on the applicant's own disclosure as a blueprint for piecing together selected references is improper. *Ecolochem, Inc. v. Southern California Edison, Co.*, 56 USPQ2d 10565, 1072-73 (Fed. Cir. 2000).

Claim 6 relates to obtaining skill-by-skill scores for individual test-takers using a coding matrix. An *iterative procedure* is implemented to select the skill set and the coding matrix. An example of an iterative procedure is described at pages 83, line 12 – page 95 of the specification. Coding matrices may be particularly useful because they can include instructionally nuanced information about the extent to which each item on the test assesses various skills.

Dependent claim 7 recites that the coding matrices are *non-binary*. The use of non-binary coding matrices is described, for example, at page 74 of the Specification.

Claim 8 relates to the use of a probabilistic function that obtains as inputs a mapping between (i) a set of overall evaluative and formative statements used to describe an individual test-taker's *overall* performance on the test *as a whole*, and (ii) all possible scores on the test as a whole. The function is used to select one of the statements to each test-taker's performance on *each skill* assessed on the test. Examples are described at pages 105 – 134 of the specification.

Dependent claim 9 uses a second function that obtains a mapping between (i) the set of overall evaluative and formative statements, and (ii) a set of skill-appropriate statements. The second function is used to select one of the skill-appropriate statements to describe each test-taker's performance on each skill assessed on the test. An example is described at pages 131 - 133.

Claims 10-12 relates to calculating individual test-takers' growth potential in particular skills assessed on a test. The subject matter is described, for example, at pages 134-142.

Claim 13 relates to assigning an evaluative or formative statement in a skill to a *group* of test-takers based on their results on a test. An example of this subject matter is described at pages 164 - 166.

Claim 14 relates to choosing an instructional approach in a skill appropriate for a *group* of test-takers based on results of a test. An example is described at pages 147 - 164. In a particular implementation, a formative statement that corresponds to the instructional action that maximizes the educational benefit accruing to all of the group members may be selected.

Claim 15 relates to displaying test-takers' results on a test administered during a prior instructional timeframe. Skill-by-skill scores or evaluative/formative statement may be displayed, where the displays are organized around the class groupings of the next analogous

instructional timeframe. Disclosures of this subject matter may be found, for example, at pages 32 and 202 of the specification. (*See also* FIGS. 21-23)

Claims 16-17 relates to displaying test results. Printed reports include one or more access codes that enable a recipient to access a secure account on a computer network (*e.g.*, the Internet). The secure accounts include additional test results and related information. The subject matter is described, for example, at pages 196 and in FIG. 19. In one particular implementation, the access codes on the printed report may include a personalized login ID and password. The claimed method may facilitate the review of test results, for example, by a teacher or administrator.

Claims 18-20 relate to providing results of a group of test-takers with respect to multiple skills assessed on a test. An electronic interface enables a viewer to select a tested skill and view the results of a group of test-takers for that skill. That feature is described, for example, at page 205 and in FIG. 22. The additional features of claim 19 are described at page 206 and in FIGS. 27 and 28. The additional features of claim 20 are described at pages 204, 207 and in FIG. 28.

Claims 21 and 22 relate to providing results of one or more test-takers with respect to multiple skills assessed on a test, together with skill-specific instructional materials appropriate to that group of test-takers. A single display provides aggregate test results for multiple tested skills. An electronic interface enables a viewer to select a tested skill and thereby view instructional materials relevant to that skill. The subject matter of those claims is described at pages 10, 206 - 208 and in FIG. 31.

Claim 23 relates to displaying results of one or more test-takers with respect to skills assessed on multi-topic tests, enabling the administration of the skill-specific assessments, and displaying results. The subject matter is described, for example, at page 209 and in FIG. 33.

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Claims 24 and 25 relate to displaying results of a group of test-takers with respect to multiple skills assessed on a test. The subject matter is described, for example, at page 205 and in FIG. 22. The additional features of claim 25 are described, for example, at page 186.

#### Claims 26-67


Claims 26-46 are system claims that correspond to some of the method claims. Claims 47-67 are article claims that correspond to some of the method claims.

#### Conclusion

Applicant requests favorable examination and allowance of the pending claims.

Respectfully submitted,

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